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INSTITUTE OF INTERNATIONAL BANKERS

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EXECUTIVE DIRECTOR AND GENERAL COUNSEL

July 19, 2002

Chief of Records

Office of Foreign Assets Control

Department of the Treasury

1500 Pennsylvania Avenue, N.W.

Washington, D.C. 20220

Attention: Request for **Comments**

Re: **Proposed Rule Concerning Disclosure of Certain Information
Regarding Civil Penalties and Informal Settlements**

Ladies and Gentlemen;

The Institute of International Bankers appreciates this opportunity to **comment on** the regulations **proposed** by the Office of Foreign Assets Control ("**OFAC**") concerning the public disclosure of information **relating to** civil penalties **and** informal settlements in relation to violations **and** alleged violations of **OFAC's** regulations. The Institute is **an association** that represents the interests of internationally **headquartered** financial institutions **that conduct** banking, securities **and insurance** activities in the United States.

The **Institute's** member institutions **have an** important **interest** in how OFAC implements its proposed **disclosure** regulations. **Our members** conduct substantial **financial** activities **outside** the United States in **their home countries** and other **countries, as well as** significant financial activities **inside** the United States. **As a result, they** commonly confront **difficult and complex** compliance issues under **OFAC's** regulations, particularly **as** they relate to U.S. **sanctions programs that diverge** from the **sanctions** policies of international **banks'** home countries.

The Institute agrees that **the** promulgation of public disclosure regulations **requires a delicate** balance between transparency on the one hand, **and** "**foreign policy** considerations **and** the requirements of the **statutes, Executive Orders, and** regulations [**OFAC**] administers and enforces" on the other. **In this regard,** the Institute supports the **suggested** changes to OFAC's proposed regulations described in the New York Clearing **House's comment** letter of today's

¹ 67 Fed. Reg. 416Sg (1992, 2002).

The Institute's mission is to solve **the** many special legislative, regulatory and tax issues confronting **internationally headquartered** financial institutions that engage in banking, securities and/or insurance activities in the United States.

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date. **Specifically**, the **Institute supports** the suggestion **that** OFAC not disclose the identity of the entity involved if the entity has self-reported the violation **or** if **OFAC and** the entity have reached **an** informal settlement without **any** finding that the entity violated applicable **OFAC** regulations. The Institute also supports the suggestion that any eventual disclosure **by** OFAC of violations be **supplemented** to **include** clarifying facts to more accurately **describe** the violation.

In our members' experience, **an** open channel of self-reporting **has** been an important component of OFAC's enforcement function. By disclosing the names **of entities that** self-report or settle informally, **and** further by not disclosing additional clarifying information regarding the potential violation, **OFAC** will **diminish** the value of the self-reporting process. **Many** transactions raise difficult **questions of interpretation relating to OFAC's regulations**. A public **disclosure** rule that penalizes self-reporting institutions for bringing **such transactions** to OFAC's attention **will discourage** self-reporting by well-meaning and law-abiding institutions. In the Institute's view, such an effect would impair OFAC's ability **to** administer **and** enforce its regulations. The Institute believes that disclosing the **types** of information **suggested** by the New York Clearing House **without disclosing** the **name of the entity**, in **contrast**, **will further** OFAC's goals of transparency without hurting OFAC's ability to administer and enforce its regulations.

The Institute appreciates that OFAC has indicated that it **does** not intend to make public **any** confidential commercial or financial information that is exempt from **public disclosure under** Exemption (4) of the Freedom of Information **Act** ('**FOIA**').* The Institute believes **that** disclosing the types of information **described** above without the name of the entity will reduce the otherwise significant **risk** that OFAC's proposed disclosure rules would **call for disclosure** of confidential commercial or financial **information protected** from **disclosure under FOIA Exemption (4)**.

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Please contact the Institute if we can provide further assistance.

Sincerely,

Lawrence R. Uhlick

Lawrence R. Uhlick
Executive Director and
General Counsel